

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO.246 OF 2012

Pradeep T. Datwani
Age:38 years, occ. Business
R/at B-203, Mandar Building
193, Turner Road, Bandra (West)
Mumbai-400 050.

..Petitioner.

V/s

Mansi D. Datwani
Age : 35 years, occ. Service.
10th Floor, Solitaire Apartments,
Nargis Dutt Road, Palli Hill,
Bandra (West), Mumbai-400 050.
Mr. Roseline R. Nadar, for petitioner.

.. Respondent.

Mrs.Naira Jejeebhoi i/b Mrs Taubon F. Irani, for petitioner.
Mr. R.T. Lalwani i/b Mr Prakash Mahadik, for respondent.

Coram : Smt. R.P SondurBaldota, J.

Date : 06th April, 2015

P.C.

1. The petitioner-husband filed the present contempt petition against the respondent-wife, alleging violation of the order dated 09th May, 2012 passed by this Court in Writ Petition No.4177 of 2012. Apart from action for contempt, he seeks (i) immediate transfer of custody of the daughter from respondent to him, (ii)

striking of the defences of the respondent in custody petition No. B-75 of 2008 and Misc. Application No.106 of 2008 and Misc. Application No.110 of 2008 pending in the Family Court at Bandra, (iii) restrain the respondent from participating in the custody petition, as also restitution petition bearing M.J. Petition A-1059 of 2005 filed by him and the petition for divorce bearing M.J. Petition A-1429 of 2005 filed by the respondent-wife and (iv) transfer of the custody of the child to the petitioner until respondent purges the contempt.

2. The order dated 09th May, 2012 in Writ Petition No.4177 of 2012 was passed by this Court on settlement of the dispute between the parties relating to the access. The relevant paragraphs of the order reads as :-

(3) It is agreed by and between the parties who are both present in the Court and who stated that the access to that child Avantika shall be given by the mother and taken by the father on Every Thursday from 3 p.m. to 10 p.m. and every Saturday and Sunday from 1 p.m. to 9 p.m. In the summer vacation of 2012 which shall end on 03rd June, 2012.

(4) During the days and period of access the father shall take the child for riding lessons. The father shall enjoy her company until the time of access is over. There shall,

therefore, be no access in the children complex of the Family Court during the summer vacation.

3. The prayer in the petition relating to the contempt reads as follows :

(a) That this Hon'ble Court be pleased to declare that respondent has committed contempt of Court by flouting the various orders of the family Court and in particular the order dated 09th May, 2012 passed by the Honourable High Court in writ petition No.4177 of 2012.

4. Bare perusal of prayer clause -(a) which is for taking action for contempt against the respondent is sufficient to note that the prayer is vague and without any particulars whatsoever. The petitioner alleges “flouting various orders of the Family Court”, but does not specify the same. As regards the only order specified in the prayer i.e. order dated 09th May, 2012 in the Writ Petition No.4177 of 2012, the prayer does not give any details of it's violation. The contempt petition is liable to be dismissed on this ground alone. The contempt proceeding being quasi-criminal proceeding, the prayer clause in the contempt petition is in the nature of charge which is required to be answered by the respondent. The absence of

particulars in the prayer clause renders the charge vague and the respondent cannot be made to face a vague charge of contempt.

5. Even if the averments in the petition are required to be taken into consideration for the purpose of understanding the allegations of the petitioner against respondent, there are also without necessary particulars. Perusal of the petition show that paragraphs No.1 to 12 thereof are devoted to past history. At paragraphs No.13, 14 and 15, the petitioner states that he was given access to the child on only five occasions i.e. on the 10th, 12th, 13th, 17th and the 20th May, 2012 which according to him was a meaningful access and he was denied access on 19th, 24th, 26th, 27th and 31st May, 2012 and further on 2nd and 3rd June, 2012. The petitioner does not give details of the incidents that took place on the dates on which access was not given to him. In the absence of particulars, the charge of contempt cannot be brought home to the respondent, particularly when respondent denies the allegations of wilful violation of the orders of the Court. Thus, averments in the petition also do not assist the petitioner. The rest of the petition is again devoted to the past incidents and orders passed by various Courts.

6. As regards, the remaing prayers in the petition described

at paragraphs No.13, 14 and 15, the same being consequential to the prayers for contempt, cannot be considered or granted separately. Hence, petition is dismissed.

(Smt. R.P. SondurBaldota, J.)